

1 *[Parties and Counsel Listed on Signature Pages]*

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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
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12 IN RE: SOCIAL MEDIA ADOLESCENT  
13 ADDICTION/PERSONAL INJURY  
14 PRODUCTS LIABILITY LITIGATION

MDL No. 3047

Case No. 4:22-md-03047-YGR (PHK)

14 This Document Relates To:

15 ALL ACTIONS

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**AGENDA AND JOINT STATEMENT FOR  
JANUARY 17, 2025, CASE MANAGEMENT  
CONFERENCE**

Judge: Hon. Yvonne Gonzalez Rogers

Magistrate Judge: Hon. Peter H. Kang

**I. Agenda for Case Management Conference (“CMC”)**

The Parties offer the below proposed agenda for the CMC scheduled for January 17, 2025:

- Meta: Meta’s Administrative Motion to Relate Insurance Coverage Matter (§ IV(D))
- PI/SD Plaintiffs and Defendants: Parties’ proposals regarding inter-circuit assignments for directly-filed bellwether cases asserting *Lexecon* objections (§ V(A))
- PI/SD Plaintiffs: Plaintiffs’ proposal to narrow Personal Injury (“PI”) and School District (“SD”) bellwether discovery pools (§ V(B))
- Meta: Relief sought with respect to California and South Carolina (§ V(C))
- State AGs: Dismissals while State AGs’ objection to state agency order is pending (§ V(D))
- Meta: Anticipated request to place State AGs on separate trial track (§ V(E))

**II. Joint JCCP Update**

At the last JCCP status conference, held December 17, 2024, Judge Kuhl (1) issued guidance and rulings with respect to various PI bellwether discovery issues; (2) issued a tentative schedule, including deadlines for general causation expert reports (April 18, 2025) and *Sargon* motions on general causation experts (July 28, 2025), and a first trial date of November 25, 2025; and (3) stated that a tentative ruling on the parties’ competing proposed jury instructions on negligence and causation would be forthcoming. Judge Kuhl invited the parties to submit comments on the Court’s tentative schedule in their joint statement for the next CMC, which will occur on January 15; a copy of the parties’ joint statement will be emailed to the Judge Gonzalez Rogers after it is submitted on January 13. The JCCP Court’s December 17, 2024 Minute Order and tentative schedule are attached as **Exhibits A and B**.

There are 17 plaintiffs remaining in the JCCP PI bellwether discovery pool, following voluntary dismissals by three bellwether plaintiffs. In total, Defendants anticipate noticing 68 depositions of bellwether plaintiffs, family members, or treating physicians. To date, the parties have cooperatively scheduled 56 of those depositions to take place between December 2024 and February 2025. Depositions commenced on December 20. As of January 10, 12 depositions have been completed.

As the Court is aware, Judge Kuhl sustained demurrers as to representative SD plaintiffs

1 from four states. Thereafter, the court stayed the remaining SD cases in the JCCP pending  
 2 plaintiffs' appeal. On January 6, the JCCP SD plaintiffs from all states other than the four states  
 3 at issue on the demurrer (approximately 400 SDs in total) filed a motion to lift the stay to allow  
 4 SD plaintiffs the opportunity to voluntarily dismiss their cases and re-file in this MDL.  
 5 Defendants intend to oppose that motion.

6 On January 8, Judge Kuhl issued an order (*see* **Exhibit C**) overruling Defendants'  
 7 demurrer to 7 JCCP plaintiffs' non-product negligent failure to warn claims under California law.

### 8 **III. Joint Discovery Update**

9 A copy of the following submissions and orders, filed or issued after the last MDL CMC  
 10 held on November 22, will be sent by email to Judge Gonzalez Rogers after this CMC Statement  
 11 is filed: Discovery Management Order No. 12 (November 26, 2024, ECF 1380); Parties'  
 12 Discovery Management Conference ("DMC") Statement for December 11, 2024 DMC  
 13 (December 4, 2024, ECF 1408); Discovery Management Order No. 13 (December 20, 2024, ECF  
 14 1479); Order re Schedule for State Agency Document Production (December 31, 2024, ECF  
 15 1495); Parties' joint DMC Statement for January 16, 2025 DMC (January 10, 2025, ECF 1512).

### 16 **IV. Joint Update on Appeals and Other Matters**

#### 17 **A. Defendants' Motions for Certification for Interlocutory Appeal**

18 On December 16, 2024, Defendants filed motions to certify for interlocutory appeal the  
 19 Court's School District Motion to Dismiss ("MTD") Orders. *See* ECF 1460, 1462. The PI/SD  
 20 Plaintiffs intend to oppose the motions. Plaintiffs' oppositions are due January 14, 2025,  
 21 Defendants' replies are due January 28, 2025, and the motions will be heard at the February 12,  
 22 2025 CMC. *See* ECF 1490.

#### 23 **B. State AGs' Anticipated 1292 Motion and Response to Defendants' 1292** 24 **Motion**

25 Meta filed a notice of conditional joinder in a supplemental motion filed by Snap and  
 26 YouTube to certify the Court's October 15, 2024 Order (ECF 1214). ECF 1462, 1463. The AGs  
 27 intend to file a response and a motion to certify the Court's order dismissing their unfairness  
 28 claims under Section 230. The PI/SD Plaintiffs intend to oppose this motion given the rulings

1 contained in these orders on PI/SD Plaintiffs' consumer protection and misrepresentation claims.

2 **C. Notices of Appeal of Failure-to-Warn MTD Orders at ECF 1214 and 1267**

3 On November 14, 2024, Meta filed a notice of appeal of the MTD Orders at ECF 1214  
4 and 1267. ECF 1330. Since that time, TikTok has joined Meta's appeal (ECF 1389), and the  
5 AGs and PI/SD Plaintiffs have filed Notices of Conditional Cross-Appeals (ECF 1386, 1388) and  
6 motions in the Ninth Circuit to dismiss Meta's and TikTok's appeals. Briefing on the MTDs, and  
7 any cross-MTDs the conditional cross-appeals, will be completed as of January 28, 2025. The  
8 appeals have been consolidated, and deadlines for merits briefing are stayed pending resolution of  
9 the MTDs.

10 **D. Meta's Administrative Motion to Relate Insurance Coverage Matter**

11 On January 7, Meta filed an administrative motion (ECF 1504) to consider whether a  
12 coverage action it filed on December 30 in N.D. Cal., in response to a declaratory relief action  
13 filed in Delaware by two of Meta's insurers, should be related to this MDL. The insurers in  
14 Delaware seek to avoid their duty to defend Meta in the MDL on the purported grounds that  
15 Plaintiffs supposedly do not seek damages "because of" bodily injury, and that Plaintiffs' injuries  
16 supposedly were expected or intended. Meta's coverage action asks this Court to suspend  
17 litigation between Meta and its insurers, including in Delaware. The coverage action therefore  
18 satisfies the relatedness requirements under L.R. 3-12(a).

19 **V. Parties' Additional Submissions**

20 **A. InterCircuit Assignments for Bellwether Cases Asserting *Lexecon* Objections**

21 The Parties agree with this Court's suggested path to facilitate the intercircuit assignment  
22 of two bellwether cases asserting *Lexecon* objections that were directly filed in this MDL. ECF  
23 1383 at 3. The Parties will prepare a stipulation setting forth the following: Plaintiffs Dymand  
24 McNeal (No. 23-cv-01092) and DeKalb County School District (No. 23-cv-05733) will re-file  
25 their cases in E.D. Pa. and the N.D. Ga., respectively. Defendants will then tag the cases for  
26 transfer, without Plaintiffs' opposition, to this MDL. Upon transfer, Plaintiffs will dismiss  
27 without prejudice the original, directly-filed cases, as replaced by the two newly-transferred  
28 actions.

1           **B.       PI/SD Plaintiffs' Proposal for Narrowing Bellwether Discovery Pools**

2           **PI/SD Plaintiffs' Position.** As previewed during the October (Hr'g Tr. 29:7-32:11) and  
 3 November (Hr'g Tr. 7:23-8:8) CMCs, the Parties have been meeting and conferred regarding the  
 4 potential narrowing of the PI and SD bellwether discovery pools before experts disclosures. In  
 5 light of the Court's guidance, the PI/SD Plaintiffs proposed that each side strike 2 bellwether  
 6 cases from the cases it originally selected for the bellwether discovery pools one week after the  
 7 Court's approval. The remaining discovery pools would then include 7 PI bellwether cases<sup>1</sup> and  
 8 8 SD bellwether cases for remaining fact and expert discovery. On May 23, 2025 at 12:00 p.m.  
 9 (CMO No. 18, ECF 1290), the Court would then select 5 cases from each bellwether discovery  
 10 pool to form the bellwether trial pools, for a total of 10, consistent with Step 2 of the bellwether  
 11 selection process outlined in CMO No. 10, at 4-5 (ECF 604).

12           Defendants are opposed to any narrowing of the bellwether pools prior to expert  
 13 disclosures and have proposed, at most, each side striking one of the other side's SD bellwether  
 14 picks. As previously explained to the Court, Plaintiffs' proposal to narrow the bellwether  
 15 discovery pools now was made for efficiency purposes and to reduce the burdens for each side  
 16 arising from conducting expert discovery on a total of 24 bellwethers. Defendants hypothesize a  
 17 parade of horrors that would ensue from this approach, but their concerns are hyperbole.  
 18 Winnowing the pools in the limited manner Plaintiffs propose occurring now would not inhibit  
 19 representative bellwether cases from being tried because it would only limit the discovery pool,  
 20 not determine the ultimate trial pool. Thus the Court and the Parties would still have guidance  
 21 from case-specific expert reports prior to additional narrowing to arrive at the trial pool (and to be  
 22 clear, such guidance would in any event only be available from *Plaintiffs'* experts' reports under  
 23 the Court's schedule (ECF 1290)). Plaintiffs' proposal that each side strike its own picks also  
 24 addresses the concern acknowledged by *Meta* at the prior CMC (Hr'g Tr. 30:17-31:21) that  
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26           <sup>1</sup> Plaintiffs advised Defendants that Plaintiff Hawthorne has decided to dismiss her action with  
 27 prejudice. Plaintiff Hawthorne just recently reached majority at which point she necessarily had  
 28 recently came to light and Defendants' insinuation as to Plaintiff Hawthorne's motive to dismiss  
 her case is baseless.

1 instead striking the other side's picks would result in the Parties simply targeting the strongest of  
2 each other's picks. Defendants are now in possession of hundreds of thousands of documents  
3 from the bellwether Plaintiffs, and Meta's argument that Plaintiffs have more information on their  
4 clients does not favor one method over the other. Plaintiffs' proposal that each Party would only  
5 be permitted to strike its own picks is a self-executing process that avoids gamesmanship.

6 In addition, there is nothing about narrowing the discovery pools now that would cause a  
7 plaintiff to decide to voluntarily dismiss their case. While voluntary dismissals—or settlements—  
8 may occur at any stage of litigation, PI Plaintiff bellwether depositions are scheduled and counsel  
9 are not anticipating additional dismissals. If the Court nonetheless believes it necessary to address  
10 Plaintiff Hawthorne's voluntary dismissal, Defendants could be permitted to veto one of  
11 Plaintiffs' two strikes, meaning Plaintiffs would have to keep the vetoed strike and instead strike  
12 another.

13 For the above reasons, Plaintiffs' proposal that each side strike 2 bellwether cases from  
14 the cases it originally selected for the bellwether discovery pool should be adopted.

15 **Defendants' Position.** Plaintiffs' proposal for narrowing the PI bellwether discovery  
16 pool would contravene the existing Court-ordered process for exercising strikes; limit the Court's  
17 ability to fashion representative trial pools; and deprive the Court and the Parties of guidance  
18 from expert reports before the pool is narrowed. As to the SD cases, where expert discovery is  
19 expected to impose significant expense on the Parties, if the Court is inclined to allow additional  
20 strikes before expert reports are due, each side should be allowed to strike one additional case  
21 (beyond the single strike already allowed at bellwether trial selection), regardless of which Party  
22 selected the case. In addition, for every PI or SD bellwether case that Plaintiffs voluntarily  
23 dismiss, Defendants should be permitted to strike one additional case (from the entire discovery  
24 bellwether pool) during bellwether trial selection.

25 *First*, Plaintiffs' proposed approach to narrowing the bellwether discovery pools—by  
26 having each side strike two of *its own picks* from each pool, and removing the Parties' ability to  
27 exercise their existing strike on the other side's picks—is contrary to the method this Court  
28 already ordered for selecting bellwether trial pools, and the opposite of how pool strikes

ordinarily are exercised in MDLs. This Court previously ordered that each side could exercise one strike of its choice during trial bellwether selection, regardless of which side originally selected the case. CMO 10 (ECF 604) at 4-5. Plaintiffs' proposal would eliminate those strikes entirely, depriving Defendants of the ability to exercise *any* strikes of Plaintiffs' picks. There is good reason why MDL courts do not limit parties to strikes of only that party's original picks: plaintiffs have unique information about which of their clients is most likely to proceed to trial (an insight their document productions shed no light on for Defendants); and the corresponding ability to voluntarily dismiss any case. This effectively allows them to unilaterally strike any defense pick they no longer wish to pursue. Plaintiffs' proposed approach therefore inflicts a one-sided disadvantage on Defendants, by forcing them to eliminate some of their own picks and precluding them from eliminating any of Plaintiffs', while Plaintiffs retain the ability to voluntarily dismiss, at any time, any defense picks.

Indeed, on January 3—after some significant negative information came to light about an individual Plaintiff's father—Plaintiffs informed Defendants that they plan to dismiss one of Defendants' original bellwether picks (*Hawthorne*), saying that the Plaintiff's father is facing an unspecified medical issue and “the Plaintiffs' immediate priority is Mr. Hawthorne's health.” Especially given that dismissal, the Court should reject a proposal that would exacerbate Defendants' disadvantage by requiring them to strike another of their own picks now, and barring them from striking any of Plaintiffs' picks. If anything, the Court should, during trial bellwether selection, permit Defendants to strike one additional case for every bellwether case Plaintiffs voluntarily dismiss. That would counter-balance *Hawthorne* (and any other cases) falling out of the bellwether pool at Plaintiffs' election, maintaining a representative pool.<sup>2</sup>

*Second*, Plaintiffs' proposed approach would curtail the Court's ability to exercise its

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<sup>2</sup> Plaintiffs suggest Defendants should instead be permitted merely to veto one of the two strikes that Plaintiffs would, under their proposal, be permitted to exercise on Plaintiffs' own picks - but with Plaintiffs then permitted to strike a different one of their picks. But that would not offset the prejudice to Defendants from Plaintiffs having already (effectively) stricken one of Defendants' picks, because it would result in an imbalanced pool consisting (under Plaintiffs' approach) of 4 Plaintiff picks and only 3 Defendant picks.



1 discretion to narrow the bellwether discovery pools “organic[ally]” to form representative trial  
 2 pools. 3/22/24 CMC Tr. at 16:9-12. It would shrink the already-small PI bellwether discovery  
 3 pool (originally consisting of 12 cases) to only 7 cases,<sup>3</sup> in turn reducing the number of cases this  
 4 Court may remove from the pool—from 5 cases (under CMO 10), to only 2 cases.

5 *Third*, Plaintiffs’ approach would prevent the Parties and Court from having the benefit of  
 6 expert reports *before* the discovery pools are narrowed to trial pools. This is the third time the PI  
 7 Plaintiffs have suggested moving bellwether trial selection *before* expert reports are due. *See*  
 8 2/23/24 CMC Tr. at 92:8-16; 10/25/24 CMC Tr. at 29:7-13. In both prior instances, the Court  
 9 clearly stated that it had purposefully set expert report deadlines to occur *before* bellwether trial  
 10 selection, to ensure the Parties and Court have fulsome information about all bellwethers before  
 11 cases are selected for the trial pool—including expert opinions regarding causation. *See* 2/23/24  
 12 CMC Tr. at 92:19-93:15; 10/25/24 CMC Tr. at 29:16-24. Nothing has changed that would  
 13 justify a new approach.

#### 14 **C. Relief Sought by Meta with Respect to California and South Carolina**

15 **Meta’s Position.** At the November 22 CMC, the Court addressed the refusal of certain  
 16 agencies in California and South Carolina to engage in the Court-ordered meet-and-confer  
 17 process on Meta’s requests for production of documents (“RFPs”). Following the CMC, the  
 18 Court issued CMO 19, noting that “one cannot refuse compliance because they disagree with a  
 19 court’s decision and consequences will flow,” ECF 1383 at 3, and directed Meta to submit a brief  
 20 as to what relief it was seeking. *Id.*

21 Meta has not yet submitted such a brief because, since the November 22 CMC, it has  
 22 continued to negotiate in good faith with the agencies at issue in an effort to resolve document  
 23 issues. These negotiations have involved substantial efforts and meaningful concessions on  
 24 Meta’s part. Meta has reached agreements with the SC agencies on a document production  
 25 process that they will follow to meet their discovery obligations. Discussions with CA are still  
 26 \_\_\_\_\_

27 <sup>3</sup> The PI bellwether pool will now consist of only 11 cases, following the January 3 decision by  
 28 bellwether Plaintiff Hawthorne to dismiss her case. Notably, 3 JCCP bellwethers dismissed their  
 cases on the eve of depositions, raising the specter of additional MDL dismissals as depositions  
 approach.



ongoing, including an in-person conferral that is scheduled for January 14. Accordingly, Meta does not at this time intend to seek sanctions from the District Court against CA or SC for these specific agencies' earlier non-compliance, but reserves the right to do so in the future should negotiations fail to yield a suitable resolution.

**California Executive Agencies' Position.** On December 18, 2024, Meta served Rule 45 subpoenas on the California Executive Agencies; the agencies accepted service and have already begun producing responsive documents on the schedule ordered by Magistrate Judge Kang. The California Executive Agencies have been meeting and conferring with Meta regarding the scope and breadth of search terms and appropriate limiters that are tailored to the issues in the case, and will continue to meet and confer in an effort to reach agreement. In the meanwhile, the California Executive Agencies continue to produce responsive, non-privileged documents.

**South Carolina AG's Position.** The South Carolina Attorney General's Office reached an agreement with Meta for obtaining the requested documents from the South Carolina Governor's Office and other agencies. We are in the process of reviewing those documents and plan to produce the relevant and non-privileged documents within our deadline for substantial completion. The previous dispute over obtaining their documents is moot.

#### **D. Dismissals While State AGs' Objection to State Agency Order Is Pending**

There were originally 35 State AGs with lawsuits pending in this MDL. On September 6, 2024, Magistrate Judge Kang issued an order granting in part, and denying in part, Meta's motion to compel discovery from state agencies. ECF 1117. The State AGs filed their objection on September 20, 2024, and the Court heard argument on October 25, 2024. Resolution of the AGs' objection remains pending. Since the order, four States—North Dakota, Georgia, Montana, and Florida—have dismissed their cases against Meta (with two of them refiled in state court but without COPPA claims). Other State AGs—including Michigan and Missouri—are likewise considering dismissing some or all of their claims against Meta as a result of the state agency discovery order. Another State—Maine—is in discussions with Meta about dismissing its state-law claims (and asserting only a COPPA claim). These dismissals, if effectuated, would leave 25 states that are still subject to the agency discovery at issue (all but the 4 states that would be

1 asserting only COPPA claims).

2 **E. Meta’s Anticipated Request to Place State AGs on Separate Trial Track**

3 **Meta’s Position.** Meta has undertaken enormous efforts to obtain from the States subject  
 4 to agency discovery compliance with the Court’s discovery orders. This has been challenging, as  
 5 the States and their agencies have repeatedly violated the Court’s orders and missed deadlines for  
 6 proposing, negotiating, or agreeing on search terms and custodians for Meta’s RFPs, *see* ECF  
 7 1291, 1292, 1299, 1380, 1479, among other issues, delaying progress. As Meta proceeds to  
 8 depositions of State witnesses, the States have made clear that they will continue to resist  
 9 reasonable discovery. Setting aside the extensive resources this has caused Meta to expend, this  
 10 delay has prejudiced Meta’s ability to progress the States’ cases. For example, as of December  
 11 23, Meta had received only 32,604 documents total from 14 of the States at issue.<sup>4</sup> Nine of those  
 12 14 States had produced volumes in only the tens or hundreds of documents; one had produced  
 13 none. A number of States still have not agreed on basic parameters for document discovery,  
 14 including some that—after improperly delaying discovery for months—are now seeking to avoid  
 15 it on the purported ground that there is no time left. Even those States that have agreed on  
 16 parameters are not required to substantially complete document productions until late January or  
 17 early February (ECF 1495.1)—nearly three months after Meta substantially completed its  
 18 production of documents, which now total 2 million.

19 The States’ prior anemic production efforts, statements from individual State counsel

20 \_\_\_\_\_  
 21 <sup>4</sup> That the *State AGs* substantially completed their (limited) productions last summer is beside the  
 22 point. Most of the relevant documents will come from the agencies—documents the State AGs  
 23 outright refused *for months* to provide. Far from having “marginal relevance” the agency  
 24 discovery Meta seeks is central to Meta’s defense, as Magistrate Judge Kang has repeatedly  
 25 recognized. *See, e.g.*, 12/11/24 DMC Tr. at 156:3-21 (“the scope of discovery is certainly broader  
 26 than the scope of plaintiffs’ claims,” and “part of [Meta’s] theory of defense is that there are these  
 27 alternate stressors,” which are “within ... the realm of discoverable information” from agencies).  
 28 The States’ continued mischaracterization of Meta’s discovery as “extraordinarily broad” is thus  
 also incorrect, and ignores the enormous concessions Meta has made in negotiations by (i)  
 proposing reasonable search terms and custodians to States that failed, despite being ordered, to  
 make those proposals; (ii) substantially narrowing Meta’s proposals based on agencies’ claims of  
 burden (which those agencies must substantiate); (iii) removing more than 50 agencies from the  
 search term process; and (iv) working with agencies to identify alternative methods of targeted  
 collections.

1 about their inability to comply with future deadlines, and past violations of prior substantial  
2 completion deadlines all raise substantial questions about whether the States will meet the most  
3 recent deadlines set by Magistrate Judge Kang. But even if they do so, Meta already has been  
4 prejudiced. To illustrate, whereas the States had roughly five months between Meta's substantial  
5 completion deadline and the States' deadline to depose Meta witnesses, Meta will have only  
6 approximately two months to prepare for and complete potentially 100 State depositions.  
7 (Because of the multitude of States suing, even a modest number of State depositions, such as  
8 three per State, leads to a large number of total depositions.) And this compressed deposition  
9 period will occur at a time when the States are conducting a high volume of Meta witness  
10 depositions, including the most senior Meta witnesses.

11 Meta has a pending request to seek relief from Magistrate Judge Kang for the States'  
12 violations of the Court's orders (ECF 1471). However, Judge Kang has made clear that requests  
13 for relief from the schedule must be made with the District Court. *See* 12/11/24 DMC Tr. at  
14 114:1-22. Accordingly, Meta seeks the Court's guidance on a timetable for seeking such relief—  
15 which will include expanding the time for Meta to complete State depositions and,  
16 correspondingly, the time by which the States may proceed to trial—so the Court may hear  
17 argument if it wishes at the February CMC. By then, the Parties will know whether at least some  
18 States have met their late January/early February substantial completion obligations, the volume  
19 of documents Meta will need to analyze to prepare for depositions, and the extent to which the  
20 States' discovery positions have prejudiced Meta's ability to complete depositions.

21 **State AGs' Position.** Meta's allegations are at best misleading and at worst patently  
22 false. The State AGs substantially completed production of documents from their own offices on  
23 August 30, 2024, nearly four months ago, which is in no way an "anemic" effort. And despite the  
24 fact that Meta is seeking extraordinarily broad discovery with at best marginal relevance to the  
25 issues in this case, the State AGs have worked diligently and collaboratively with state agency  
26 counsel to satisfy Magistrate Judge Kang's orders regarding agency discovery. The State AGs  
27 and relevant agencies have made and continue to make significant progress in completing this  
28 discovery; state agencies have generally begun document productions and are moving towards

1 substantial completion.

2 The State AGs are evaluating Meta's request regarding the discovery and trial schedule—  
3 including Meta's detailed argument above, which the State AGs dispute. The State AGs will be  
4 prepared to discuss Meta's request in person at the CMC.

1  
2 DATED: January 10, 2025

Respectfully submitted,

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**ATTESTATION**

I, Lexi J. Hazam, hereby attest, pursuant to N.D. Cal. Civil L.R. 5-1, that the concurrence to the filing of this document has been obtained from each signatory hereto.

Dated: January 10, 2025

By: /s/ Lexi J. Hazam